IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 713 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI BABUBHAI BECHARBHAI

Versus

STATE OF GUJARAT

Appearance:
MR RJ OZA for Appellant
MR HL JANI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant who was accused no.1 in Sessions Case No.173 of 1992 before the learned Additional

Sessions Judge, Bhavnagar was convicted for the offence punishable under Section 302 and was sentenced to life imprisonment. In all, there were seven accused on trial for the offences punishable under Section 302 read with Section 149, Sections 323 and 326 read with Section 149 of the I.P.C. and Sections 341, 427 and 337 read with Section 149 of the I.P.C. Only the appellant came to be convicted for the offence under Section 302 and he and the other accused were acquitted of the rest of the offences charged to them. The appellant has challenged his conviction by filing the present appeal. There is no appeal by the State against the order of acquittal made by the learned Additional Sessions Judge.

2. The incident in question occurred at about 8.30 p.m. on 28th June, 1992 in village Sandhyala No.2, Taluka Botad, District Bhavnagar. According to the prosecution version, about a week before the incident, there was a dispute about the passage of rain water between the complainant and his uncle on one side and some of the accused on the other side. On the date of the incident, at about 8.30 p.m., while the complainant Ranchhodbhai Devshibhai, his father Devshibhai and Virji Parshottam were sitting near the delha of their house, the appellant Babu Bechar came there armed with a stick and demanded to know from Devshibhai why he had not solved the question of disposal of rain water. The complainant told him that they had given an application in the Panchayat and Panchayat will dispose of the same. However, the appellant got excited and delivered two stick blows on the head of Devshi Parshottam who fell down and started bleeding. While he was being carried in a jeep to the Government hospital, the accused came there armed with sticks and Dharia and they started throwing stones, as a result of which the jeep was damaged and at that time Harijan Manjuben, Gauriben and Harijan Hira Vashram who happened to be passing by were injured by stones. Devshibhai was first taken to the primary health centre at Botad where Dr. Devjibhai Savjibhai who was the Medical Officer examined him and found two injuries on his head. The Executing Magistrate was also called there who recorded the dying declaration of Devshibhai Parshottambhai. The police also recorded the complaint of Ranchhodbhai who was the son of Devshibhai. From there, Devshibhai was taken to Sir. T. Hospital, Bhavnagar. There he was examined by Medical Officer Dr. Dhirajlal Girdharlal who gave primary treatment to Devshibhai but since his condition was not good, he referred the patient to the Civil Hospital at Ahmedabad. However, Devshibhai succumbed to his injuries on the next

day in Civil Hospital. The accused were arrested in due course and, according to the prosecution, the stick was discovered at the instance of the appellant and it was found to be stained with blood of the same group as that of Devshibhai.

3. After completing the investigation, all the seven accused were chargesheeted for the offences as stated earlier. At the trial, the prosecution examined as many as 15 witnesses out of whom 4 were eye-witnesses. They were P.W.3 Ranchhodbhai Devshibhai (Exh.25), P.W.4 Virjibhai Parshottambhai (Exh.27), P.W.5 Rajnibhai Motibhai (Exh.28) and P.W.6 Hirabhai Vashrambhai (Exh.29). All of them said that the appellant gave stick blows on the head of the deceased Devshibhai. At the end of the trial, in his further statement under Section 313, the accused said that the prosecution evidence was false but they submitted a written statement (Exh.75) in which they set out their version of the incident. According to them, it was Rajni Moti who had hit Bhupat Bechar on the head with a brick and Bhupat Bechar came running and was weeping and on being asked, he said that he had been hit by Rajni Moti. Hence, they went to Rajni's place where Moti Parshottam, Rajni Moti, Devshibhai Parshottam, Ranchhod Devshi, Virji Parshottam, Labhu Parshottam, Manji Parshottam, Premji Shamji, Vallabh Shamji and Shamji Kanji were sitting armed with sticks. The appellant asked Devshibhai why Rajni had hit his brother Bhupat and why they were harassing them. Thereupon, Devshibhai got excited and started giving abuses. When they remonstrated with him, Devshibhai Parshottam gave a stick blow on the head of Devji Popat. At that time, the appellant intervened to save Devji Popat. It was alleged that Moti Parshottam gave two stick blows on the head and shoulder of the appellant and Devshibhai Parshottam also gave a stick blow on the shoulder of the appellant. The appellant managed to escape but Devshi Parshottam and others ran after him and, hence, the appellant took up a stick and started brandishing it but even then Devshibhai Parshottam gave a stick blow on the head of the appellant and thereupon the appellant delivered a stick blow on the head of Devshibhai Parshottam in self-defence. Thus, the accused pleaded the right of self-defence.

4. The learned Sessions Judge accepted the evidence of the eye-witnesses and came to the conclusion that it was the appellant who was the aggressor and delivered the first blow. He also found that the story of Babu Bechar having been hit with a brick was not established. He,

therefore, held that the right of self-defence was not established.

5. As stated earlier, there are 4 eye-witnesses to the incident one of whom was the son of the deceased himself and who immediately lodged the complaint. The learned counsel for the appellant took us through the entire evidence on record. He submitted that Ranchhodbhai who was the complainant had referred to only two blows in the complaint while he refers to three blows in evidence. This is hardly a contradiction which could be said to shake the evidence of Ranchhodbhai. The evidence of Dr. Devenbhai Govindbhai (P.W.16) who performed the post-mortem clearly shows that there were six injuries out of which injuries no. 1, 4 and 6 were on the head. The learned counsel for the appellant then submitted that there was a contradiction in the evidence of Ranchhodbhai with regard to the place of the incident. He submitted that while, in his evidence, he said that the incident occurred near the house of his uncle, in his complaint, he had stated that the incident had occurred near their house. However, this contradiction was not put to him in his cross-examination and in the circumstances of the case, we are not satisfied that it shakes the evidence of the complainant particularly when other witnesses narrate the same story. It was contended that Rajnibhai Motibhai (P.W.5) who was another eye-witness and who was a relative of the deceased has admitted in cross-examination that Devshi Parshottam had delivered a blow on the head of the appellant and that the appellant had delivered a blow on the head of the deceased in self-defence. However, in the previous sentence in his cross-examination, he had categorically denied that Devshi Parshottam had rushed at Babu Bechar with a stick. The so-called admissions in the next two sentences are not consistent with the tenor of the whole evidence and it appears that, by inadvertence, there was some mistake in recording this part of his evidence. He has clearly denied all the other suggestions to the effect that the accused were acting in self-defence. It was also argued that Hirabhai Vashrambhai (P.W.6) who was also an eye-witness was too far from the scene of the offence to have witnessed the same. However, on reading the evidence, we are satisfied that he is a reliable witness. There is no substance in his suggestion that he had not seen the incident. It is contended that in the arrest panchnama of the appellant, there is a reference to an injury on the head of the appellant. But there is nothing to show what was the nature of the injury and how he suffered it. The learned Sessions Judge was,

therefore, right in coming to the conclusion that the circumstances pleaded by the accused in their written statement to show that they were acting in self-defence were not brought on record and were not established and that it was the appellant who had delivered the first blow and was the aggressor.

6. The learned advocate for the appellant then contended that this was a case of sudden quarrel and the appellant got excited and gave the blows on the spur of the moment. He also submitted that at most the offence would be under Section 304 Part 2 of the I.P.C. and, in any case, it cannot go beyond Section 304 Part 1. The evidence of Dr. Devenbhai Govindbhai who carried out the post-mortem shows that there were six injuries on the body of the deceased, out of which injury no.2 was a stitched wound on the Left parietal eminence and on removing stitches, Margins and edges were crushed on both sides about 0.5 cm. Injury no.4 were two CLWs on the Vault, 3 x 1 cm and 2.5cm x 1.5 cm. Injury no.6 was a stitched wound on Right fronto parietal region 6.00 cm and on removing stitches, margins were crushed. According to him, death occurred due to coma following head injuries and injuries were caused by hard and blunt objects. He also states that injury no.2 was sufficient by itself to cause death in ordinary course of nature and injuries no.4 and 6 were conjointly sufficient to cause death. As stated earlier, the evidence of eye-witnesses clearly shows that it was the appellant who started the quarrel and delivered the blows and it cannot be said that the incident started on the spur of the moment. The learned counsel for the appellant cited a decision of the Hon'ble Supreme Court in the case of Camilo Vaz vs. State of Goa reported in 2000 (9) SCC Page 1 and contended that there was absence of intention to cause death. However, each decision turns on its own facts and there can be no authority on facts. In the present case, the contention that the offence would fall under Section 304 cannot be accepted. The learned Sessions Judge has rightly convicted the appellant under Section 302. There is no merit in the appeal and the same is dismissed.

(M.C. Patel, J.)

(A.L. Dave, J.)

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